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**UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office**

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CVB

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/462,224

01/03/00

JANSSENS

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702-991961

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PM82/0221

EXAMINER
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RUSSELL D ORKIN

700 KOPPERS BUILDING

436 SEVENTH AVENUE

PITTSBURGH PA 15219-1818

JULES E

ART UNIT	PAPER NUMBER
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3617

DATE MAILED:

02/21/01

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/462,224	JANSSENS, MARCEL HENK ANDRE	
	Examiner	Art Unit	
	Frantz F. Jules	3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 8-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All   b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

**Attachment(s)**

- |                                                                                               |                                                                              |
|-----------------------------------------------------------------------------------------------|------------------------------------------------------------------------------|
| 15) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 17) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 20) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 8, 10-12, 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Hodgson.

Claims 8, 10-12, 14

Hodgson teaches all the limitations of claims 8-12, 14, by showing in fig. 1, a rail track comprising at least two parallel rails (3) supported by a non-compressible base body (8) provided with a channel-like recess with parallel side walls (6) for receiving the rails (3) such that the running surface of the head of the rail lies free, with the bottom of the channel-like recess provided with a first layer of yielding material (7) which extends under the bearing surface of the foot of the rail to fully support the rail (3), and with the side surfaces of the rails (3) covered with a second layer (8) of yielding material, wherein the space between the second layer (24) and the channel like recess is filled with a filler body of non-compressible material (17), the second layer has a greater stiffness than the first layer as the sizes are different with asymmetrical cross-section rail; the elastic material being used as sound-absorbing material, see columns 1-4, lines 1-68.

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3. Claims 8-9, 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Ortwein.

Claims 8-9, 14

Ortwein teaches all the limitations of claims 8-9, 14, by showing in figs. 1-7, a rail track comprising at least two parallel rails (3) supported by a non-compressible base body (6) provided with a channel-like recess (4) for receiving the rails (3) such that the running surface of the head of the rail lies free, with the bottom of the channel-like recess provided with a first layer of yielding material (9) which extends under the bearing surface of the foot of the rail, and with the side surfaces of the rails (3) covered with a second layer (4) of yielding material, wherein the space between the second layer (24) and the channel like recess is filled with a filler body of non-compressible material (17); the elastic material being used as sound-absorbing material, see columns 1-4, lines 1-68.

4. Claims 8-9, 13-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Lesley.

Claims 8-9, 13-14

Lesley teaches all the limitations of claims 8-9, 13-14 by showing in figs. 1-4 a rail track comprising at least two parallel rails (11) supported by a non-compressible base body (26) provided with a channel-like recess (28) for receiving the rails (11) such that the running surface of the head of the rail lies free, with the bottom of the channel-like recess provided with a first layer of yielding material (18) which extends under the bearing surface of the foot of the rail, and with the side surfaces of the rails (11) covered

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with a second layer (12) of yielding material, wherein the first and/or second layer of yielding material is interrupted and the space between the second layer (12) and the channel like recess is filled with a filler body of non-compressible material, see abstract section.

***Response to Arguments***

5. Applicant's arguments filed 1/22/01 have been fully considered but they are not persuasive.

**A. Summary of applicant's argument**

In the amendment, applicant traversed the rejection of claims 8-14, currently amended for the following reasons:

1. The newly added claim limitations of the bottom of the channel-like recess fully supports the rail and side walls of the channel-like recess are parallel should overcome the previous prior art rejections.
2. The references cited in the rejection, Ortwein, is formed of two parts which cannot be fully supported.

**B. Response to applicant's argument**

1. Regarding applicant's argument number 1, it should be noted that the newly added claim limitation of the bottom of the channel-like recess fully supports the rail and side walls of the channel-like recess are parallel doesn't overcome the prior art rejection as all the arts used in the 102 rejection do have a bottom channel recess that fully supports the rail. Also, all of the prior arts used in the rejection above disclose side walls of channel-like recess that are parallel. Thus, the added limitation of the bottom of the

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channel-like recess fully supports the rail and side walls of the channel-like recess are parallel fails to distinguish the newly amended claim 8 over the prior arts.

2. Regarding applicant's argument number 2, it should be noted that Ortwein discloses a resiliently mounted rail supported by non-compressible concrete base. All the views shown in the prior art are cross-section view, meaning a view taken along the longitudinal centerline of the rail assembly. Even with a two piece support frame, the prior art still shows a channel-like recess with the bottom fully supporting the rail. This argument is weak in overcoming the prior art rejection in light of the teaching of Ortwein.

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantz F. Jules whose telephone number is (703) 308-8780. The examiner can normally be reached on Monday-Thursday and every other Friday from 07:30 AM to 5:00 PM.

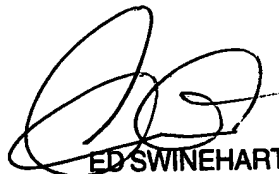
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph S. Morano, can be reached on (703) 308-0230. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Frantz Jules  
Patent Examiner  
Art Unit 3617

FFJ

February 15, 2001



ED SWINEHART  
PRIMARY EXAMINER